(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

CRIMINAL MISCELLANEOUS APPLICATION NO. 93 OF 2004
IN CRIMINAL MISCELLANEOUS APPLICATION NO. 94 OF 2004

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. R. P. Pednekar, advocate for the applicant.

Mr. S. S. Kantak, advocate for respondent nos.1 to 5.

Ms. Winnie Coutinho, A.P.P. for respondent no. 6.

CORAM : P. V. HARDAS, J.

DATE : 26th August, 2004.

P.C.

This is an application under Section 482 of the Code of Criminal Procedure, assailing the judgment of the District and Sessions Judge, South Goa at Margao, dated 29th January, 2003, in Criminal Revision Application no. 79 of 2003, dismissing the revision filed at the behest of the present applicant and thereby confirming the Order of the

Judicial Magistrate First Class, Vasco da Gama dated 18th September, 2003, in Criminal Case No. 68/OA(NIA))/ 03/A, discharging the respondent nos.3 to 5 and issuing process only against respondent nos.1 and 2.

2. The revisional Court in para 10 of its judgment, which is impugned in the present application, has endorsed the finding of the Judicial Magistrate First Class, Vasco da Gama, discharging respondent nos.3 to 5, holding that there were no averments in the complaint and the verification statement of the complainant that respondent nos.3 to 5 were involved in day-to-day business of the respondent no.1 Company. The trial Judge had also observed that apart from the bald averment that the respondent nos.3 to 5 were the Directors, there was no evidence/averment to show that respondent nos.3 to 5 were in charge and responsible to the Company for its business. The revisonal court after discussing the judgment cited at the

Bar, in para 21 of its judgment has observed that the conclusion arrived at by the Judicial Magistrate, First Class, Vasco da Gama in not issuing process against respondent nos. 3 to 5, could not be faulted with. The revisional court, therefore, dismissed the revision.

3. Mr. Pednekar, learned counsel appearing on behalf of the applicant, has urged that it was not necessary to make averments in respect of the said Directors that they were in charge and responsible to the Company for its day-to-day functioning and a mere statement that accused nos. 3 to 5/respondent nos.3 to 5, were Directors, would suffice for the trial Court to issue a process against them.

4. Mr. S. S. Kantak, learned counsel appearing on behalf of the respondent nos.1 to 5 has supported the orders of the two courts below and has submitted that in the absence of necessary averments, the complaint as against accused nos. 3 to 5 was not maintainable and the trial Court had

rightly discharged respondent nos. 3 to 5.

5. My attention has been invited to a recent judgment of the Supreme Court in *Monaben Ketanbhai Shah & Anr. vs. State of Gujarat & Ors.*, (JT 2004{6} SC 309). In this judgment the Supreme Court while considering the scope of Section 141 of the Negotiable Instruments Act, 1881, has held that it was the primary responsibility of the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. The obligation for the accused to prove that at the time of the offence they were not in charge of and were not responsible to the Company for the conduct of its business, would arise only when the complainant makes necessary averments in the complaint to establish that fact. The Supreme Court further held that since the complaint in the case totally lacked the requisite averments, it could not be sustained.

6. Similar is the situation in the present case where necessary averments in respect of accused nos.3 to 5 had not been made in the complaint and, accordingly, the trial Court had discharged accused nos.3 to 5/respondent nos. 3 to 5 and the said order of the trial Court was confirmed in revision by the revisional Court.

7. This is an application under Section 482 of the Code of Criminal Procedure and I do not find any perversity in the reasoning of the two courts below to warrant any interference. Accordingly, Criminal Miscellaneous Application no.93 of 2004 is dismissed.

P. V. HARDAS, J.

mc.